IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 743 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SULEKHRAM STAINLESS STEEL ROLLING MILL

Versus

BABUBHAI CHANAJI SINCE DECD. THRO' HEIRS AND LEGAL REPR.

Appearance:

1. First Appeal No. 743 of 2002

MR KISHOR M PAUL for Petitioner No. 1

..... for Respondent No. 1

MR TR MISHRA for Respondent No. 1/1

NOTICE SERVED for Respondent No. 1/2-1/4

DELETED for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 02/08/2002

ORAL JUDGEMENT

The present First Appeal is filed by the appellant being aggrieved of the judgement and order dated 4.10.2001 passed below the Workmen's Compensation Application No.108 of 1987 by the Workmen's Compensation Court, Ahmedabad.

2. Mr.Paul, learned advocate appearing for the appellant submitted that there was no employer-employee relationship, the application was filed at a belated stage as the accident had taken place in 1980 and the application was filed in 1987, the Court without any material, which could have been taken as the basis, awarded Rs.32,340/-.

3. The learned advocate Mr.T.R. Mishra appearing for the respondents-- heirs of the workman, who died in the year 1999 submitted that the submissions of the appellant are without any substance. He submitted that so far as the first submission of having no relationship of employer-employee is concerned, it is not correct inasmuch as it is the case of the appellant himself in para 5(B) of the reply to the Workmen's Compensation Application that the workman was working under opponent no.2-- contractor as a daily wager for carrying out the work of white washing and paint.

3.1 The learned advocate Mr.Mishra relied upon the decision of the High Court of Punjab & Haryana in the matter between Smt.Kamla Devi and others v. M/s Bengal National Textile Mills Limited, Calcutta, reported in 1975 II LLJ 81. He submitted that in the facts of that case, the workman had died as a result of head injury caused while engaged in white washing in the factory premises. The Court held that the workman is deemed to have died in the course of employment and the company was held liable to pay compensation. Mr.Mishra, the learned advocate relied upon para 5 of that judgement, the relevant part of which reads as under:

> ".. .. In other words, both the limbs of the conditions of exclusion have to be satisfied. The expression "otherwise than for the purposes of the employer's trade or business" occurring in the aforesaid definition of workman carries significance. Business would mean anything which occupies the time, attention and labour of a man for the purpose of profit. It is wider than trade. The maintenance and upkeep of the premises of the business must be taken as purposes of the business. Therefore, the

maintenance and repairs of the factory of the respondents, where they carried on business, have to be considered as purposes of the business. The said repairs may be minor or major, periodical or permanent. White washing would have undoubtedly added beauty to the factory of the respondents and it would render good look which could attract more customers. It would have further provided good view and healthy atmosphere for the workman working there. Therefore, white washing of the factory of the respondents has to be taken as one for the purpose of their business. According to cl.(viii)(a) of Schedule II of the Act, any persons who is employed on the maintenance and repair of any building would be workman within the meaning of S.2(1)(n) of the Act. .. .."

4. Mr.Mishra, the learned advocate dealing with the grounds of delay submitted that the Commissioner under the Workmen's Compensation Act has considered the aspect of delay caused in filing the application for the workmen's compensation at exh.28. The Commissioner has recorded that the accident had taken place in July 1980, after which the workman was not able to work on account of the accident, the workman had to take treatment for a long time and he was required to be an in-door patient in Shardaben Hospital for 24 days; that the workman died of tuberculosis on 10.1.1999; that in 1987 when he filed this application he was under treatment. The Commissioner has recorded his conclusion that in view of the contents of the application of the workman, the delay caused in filing the application is condoned. Mr.Mishra, the learned advocate relied upon the judgement of Madhya Pradesh High Court in the matter between Shyamal, S/o Chinta Ram v. Divisional Railway Manager and another, reported in 2000 II LLJ 527. There the Court was considering the provisions of sec.10(1) of the Workmen's Compensation Act, 1923 and the proviso thereof. The Court held that the Commissioner can consider sufficiency of cause for delay in making claim, such as, illiteracy of claimant. Mr.Mishra, the learned advocate relied upon para 7 of the said judgement, the relevant part of which reads as under:

"7. .. ..
.. ..

The Fifth Proviso to subsection (1) of Section 10 of the Act shows that the Commissioner may entertain and decide any claim in any case

notwithstanding that the notice has not been given, or the claim has not been preferred in due time, as provided in this subsection if he is satisfied that the failure so to give the notice or prefer the claim was due to sufficient cause. This provision indicates that the Commissioner has got the power to condone the delay. He could condone the delay to any extent. The only thing is that he must be satisfied that the delay was on account of sufficient cause. In the present case, firstly the cause shown was that the appellant was an illiterate person; and secondly that, he was given assurance by the Railway that he would be paid compensation. No finding has been recorded whether such a cause was sufficient or not."

5. Mr.Mishra submitted that in fact in the aforesaid decision, the High Court relied upon the decision of the Honourable the Apex Court in the matter between Ram Sumiran and others v. D.D.C. and others, reported in AIR 1985 SC 606. In para 9, the High Court has quoted the observations of the Honourable the Supreme Court, which are as under:

"The appellants are admittedly from the rural area and in a country like ours where there is so much poverty, ignorance and illiteracy, it would not be fair to presume that every one knows that on death of a respondent, the legal representatives have to be brought on record within a certain time. The ends of justice require that the application for bringing the legal representatives of the deceased respondent no.5 should have been granted."

6. The learned advocate Mr.T.R. Mishra also relied upon a judgement of the High Court of Kerala in the matter between Secretary, Trivandrum Port and Headload Workers Cooperative Society Ltd. v. V. Dhaneshkumar alias Thampi and another, reported in 2001 I LLJ 1629. Mr.Mishra submitted that the High Court while considering the definition of the term 'workman' under clause (n), subsection (1) of section 2 of the Workmen's Compensation Act, 1923, was pleased to hold that even a substitute will be 'workman', if engaged for the purpose of principal employer's trade or business. He submitted that as submitted hereinabove 'white washing' is included in the term of 'employer's trade or business' and as held by the High Court of Kerala even a substitute will be a workman under the definition of the term, as contained in

section 2(1)(n) of the Workmen's Compensation Act. He relied upon para 12 of the judgement, wherein the Court after taking into consideration various authorities cited before it observed as under:

"12. From the above decisions, the legal position that clearly emerges is that if one is a workman, it does not matter whether he is a substitute, even if he has no direct relation with the principal employer. In other words, even if there is no employer-employee relationship with the principal employer, a substitute will be a workman if he is engaged for the service of the principal employer and he is occupied in the performance of work or duties for the principal employer or if he is retained for the service of the principal employer. What is of paramount importance is whether the person is engaged for the purposes of the trade or business of the principal employer. Such person can even be a casual employee, as has been settled by a catena of decisions of this Court in Kochu Velu v. Joseph, 1980 II LLJ 220 (Ker. D.B.); Kochappan v. Krishnan, 1987 II LLJ 174 (Ker. D.B.); Balagram v. Kochumon, 1998 I LLJ 744 (Ker. D.B.) which was a judgement delivered by one of us (Abdul Gafoor, J.). The crux of all those decisions is seen in the words of K.T. Thomas, J. (as he then was) in the Bench decision in Moideen v. Gopalan, 1996 I LLJ 1027 (Ker. D.B.).

"7. Even assuming that claimant's employment on that day was of a casual nature, that by itself is not enough to push him out of the ambit of the definition of workman. If a person has to be ousted out of the contours of the definition, the causal nature of his engagement must couple with the succeeding postulate in the definition that such employment should not be for the trade or business of the employer. The word "and" used in the definition is for the conjunction of the two postulates together in one person. No interpretation to make the two postulates disjunctive is warranted in the context."

7. In view of the aforesaid discussion, the present First Appeal is dismissed. No order as to costs.

8. No orders on Civil Application No.2828 of 2002.

The Civil Application is disposed of accordingly. Notice is discharged.

(Ravi R. Tripathi, J.)

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